



Review of the State Industrial Relations System – Interim Report

**Supplementary Submission -
Interim
May 2018**

Contact:

Tony Brown
Executive Manager, Governance & Organisational Services
WALGA
ONE70, LV 1, 170 Railway Parade, West Leederville
Phone: (08) 9213 2051
Fax: (08) 9213 2077
Email: tbrown@walga.asn.au
Website: www.walga.asn.au

Kate Pillai
Employee Relations Service Manager
WALGA
Phone: (08) 9213 2592
Email: kpillai@walga.asn.au

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1. About WALGA

The Western Australian Local Government Association (**WALGA**) is the peak industry body for Local Government in Western Australia. WALGA is an independent, membership-based organisation representing and supporting the work and interests of 138 Local Governments and 9 Regional Local Governments in Western Australia.

WALGA provides an essential voice for approximately 1,222 Elected Members and approximately 22,000 Local Government employees (or approximately 15,000 FTE) as well as over 2.5 million constituents of Local Governments in Western Australia. WALGA also provides professional advice and offers services that provide financial benefits to the Local Governments and the communities they serve.

2. Supplementary Submission - Interim

This submission is intended to supplement WALGA's Interim Submission to the Ministerial Review of the State Industrial Relations System (**Review**) dated December 2017 (**2017 Submission**). WALGA confirms the content of the 2017 Submission as endorsed by the WALGA State Council on 7 March 2018. The 2017 Submission will not be duplicated in this Supplementary Submission (**Supplementary Submission**) however, may be referenced and/or expanded upon where relevant in providing comment on the Interim Report of the Ministerial Review of the State Industrial Relations System published on 20 March 2018 (**Interim Report**).

The proposed recommendations contained in Chapter 9 of the Interim Report are extremely significant for Western Australian Local Governments and as such, this Supplementary Submission will focus predominantly on addressing recommendations 69 to 73, and the discussion outlined by the Review within that chapter.

Due to the timeframe of the consultation period, the comments contained in this submission have not yet been considered or endorsed by WALGA's State Council. Please be advised that, as such, this is an interim Supplementary Submission. WALGA reserves the right to modify or withdraw the comments as directed by State Council. The WALGA State Council will consider endorsing the submission on 4 July 2018.

3. Recommendations

It is recommended that:

- A. The current dual system of industrial relations regulation of the Local Government sector remain unchanged.
- B. State Government further consult with the Local Government sector regarding the cost and impact of the jurisdictional uncertainty under the current industrial relations regime to assess the need for change.
- C. If recommendation B identifies a need for further certainty, that discussions be held between representatives of all three tiers of government and other key stakeholders in the Local Government industry regarding how industrial relations certainty is best achieved for the Local Government sector in WA.
- D. No legislation is introduced to parliament to declare that Local Government is not a national system employer.
- E. The SES be introduced as part of the 2018 IR Act consistent with recommendations 47 and 48.
- F. That any review of the casual loading be undertaken by the WAIRC or included as part of the SES, following consultation from interested parties.
- G. That unpaid FDV leave be included in the SES.

If the State government implements proposed recommendation 69 pursuant to recommendations 70 and 71, it is further recommended that:

- H. Local Governments, and any applicable federally registered Agreements, transfer to the State IR system following introduction of the SES and that the Agreements are amended to incorporate the SES in place of the NES.
- I. Award modernisation be undertaken prior to Local Government's transition to the State IR System.
- J. The proposed modernisation of the State Local Government awards be aligned to the modern Local Government Industry Award 2010.

- K. The three types of bargaining agreements be reviewed and replaced with a single collective enterprise bargaining agreement in which the parties are the employer and employees, with the option of the union being a party.
- L. That the better off overall test replace the no disadvantage test.
- M. The proposed taskforce composition be revised to include two Local Government Officers, to be appointed by WALGA in line with WALGA's Selection Committee process, and the CCI WA.
- N. Any review of portability of entitlements between State and Local Government be considered as part of the current Local Government Act review process.

4. Sector Engagement

As outlined in the 2017 Submission, WALGA has engaged thoroughly with the Local Government sector in relation to the Review. Since publication of the Interim Report in March 2018, further engagement has been undertaken as set out below.

21 March 2018	Employee Relations Alert to newsletter subscribers, advising of Chapter 9 recommendations in the Interim Report, inviting written feedback and registration for Sector Reference Group consultation. Infopage containing information (as above) emailed directly to all member Local Government CEOs.
23 March 2018	LG News article circulated via email to all member Local Governments containing Chapter 9 recommendations, linking the Interim Report and detailing future consultation.
27 March 2018	Sector reference group consultation meeting held with attendees from 10 member Local Governments including metropolitan and regional attendees.
6 April 2018	Written submissions received from members on the Interim Report and recommendations.

As the Local Government sector peak body, WALGA represents the views of 138 member Local Governments and 9 Regional Local Governments. While individual Local Governments may take a different view to the majority of the sector on certain issues, WALGA represents the view of the Local Government sector in this Supplementary Submission, and the 2017 Submission before it, rather than solely as an individual stakeholder.

WALGA has consulted broadly and widely with Local Governments in Western Australia on many facets of the review including the industrial relations regulation of Local Government, the jurisdictional dilemma, the potential transition process, modernisation of the State system and portability of entitlements. Accordingly, it is with confidence that this submission represents the view of the Local Government sector, as a distinct sphere of Government important to the governance of Western Australia and the daily lives of Western Australians.

5. Industrial Relations Regulation of Local Government

WALGA opposes the Review’s proposed recommendation 69 that Local Government employers and employees should be regulated by the State Industrial Relations System.

69. Local government employers and employees be regulated by the State industrial relations system.

It is understood by WALGA the achievement of jurisdictional certainty for WA Local Government in industrial relations is the primary objective underpinning item 8 of the Terms of Reference in this Review. Further, WALGA acknowledges the concerns raised by the Review associated with Local Governments operating under the potentially changing status as a constitutional corporation based on the judicial activities test as a question of law. Further comments are noted below for the consideration of the Review.

WALGA acknowledges the Review’s comments concluding that Local Government forms part of the body politic of the State. As addressed in the 2017 Submission, WALGA maintains the view that the application of one industrial relations framework over the other should not be determined with reliance on s52 of the *Constitution Act 1889 (WA)* (**WA Constitution**), as this is contrary to the purpose of that provision. There is no requirement for Local Governments to be regulated by the State industrial relations system in the WA Constitution. Local Government is a distinct arm of government, separate to the State public service, and should be recognised as such.

Reliance on the foundational principles of the establishment of Local Government in State legislation to determine industrial relations regulation fails to recognise the role of the Commonwealth in legislating pursuant to the corporations power¹, the establishment of Local Government as bodies corporate under the *Local Government Act 1995 (WA)* (**LG Act**) and the contemplation of trading activities being undertaken by Local Government pursuant to the LG Act. The characterisation of Local Government as ‘no ordinary corporation’ by the Review due to the dual governmental function together with the restrictions on trading under the LG Act, do not negate the application of the Commonwealth legislation to Local Government where a Local Government meets the definition of a constitutional corporation at law.

While the Review’s assessment of the case law on this issue is beneficial to understanding how the current test for determining characterisation as a constitutional corporation has been applied to Local Government on a case by case basis, and provides insight into non-binding comments of advocates on the matter, we respectfully disagree with the Review’s conclusion on the strength in the collective effect that ‘[Local Government] are not constitutional corporations’². It is WALGA’s view that this assessment does not assist in determining the overall characterisation of Local Government employers as constitutional corporations or not. The Review’s conclusion cannot be generalised to the sector in the absence of High Court authority and any suggestion to do so on the basis of the current case law would be inappropriate and unfounded.

WALGA notes the consideration by the Review of unfair dismissal and denied contractual benefits applications made to the Western Australian Industrial Relations Commission (**WAIRC**) by Local Government employees as part of their assessment. This, in WALGA’s view, fails to provide any substance to the position of the Review as these figures are indicative only of one of the following: the Local Government employer’s operation under the State jurisdiction; an employee applicant’s understanding of the appropriate industrial relations jurisdiction as the WAIRC; or the advice provided to individual employee applicants by employee representatives as to the appropriate jurisdiction. There is no indication of the extent these claims involved Local Governments currently regulated by the State industrial relations system (**State system**). As denied contractual benefits claims before the WAIRC are open to all WA employees, we propose no weight be given by the Review to these claims in the Local Government context.

Further, the volume of jurisdictional objections raised by Local Governments before the WAIRC only serves to reflect the high number of Local Governments operating under the Federal

¹ *Commonwealth of Australia Constitution Act 1900*, s51(xx).

² Interim Report at [1564].

industrial relations system (**Federal system**). The absence of jurisdictional objections proceeding to hearing is also of little significance in our view, as this may be indicative of the parties' resolution strategy or motivation by the applicant to proceed to hearing following advice on prospects of a claim.

If the Review intends to understand the historical interaction between Local Governments and industrial tribunals, including the number of jurisdictional objections, it would seem appropriate that a review of interaction with the Fair Work Commission (**FWC**) across all application types be undertaken for an objective assessment. We note a number of references in submissions to the Review citing the cost to the Local Government sector in mounting and defending jurisdictional objections. Based on the data provided by the Review, very few jurisdictional objections are proceeding to hearing and as such, there may be little actual cost to Local Government in maintaining the current duality of industrial relations systems. A further assessment of this interaction would also assist the Review in determining the true cost to the sector of jurisdictional uncertainty (if any), as supported by statistics.

The Interim Report demonstrates that the Review has placed significant weight on the objective of achieving jurisdictional certainty for the Local Government sector. As the Terms of Reference were formulated by the State Government without consultation with the Local Government sector, it is unclear whether there is any evidential or other persuasive basis indicating that the jurisdictional dilemma is significantly impacting the sector, either financially or in terms of perceived risk associated with mischaracterisation as constitutional corporations, or indeed, that implementation of the proposed recommendation would be in service of Local Government interests. Jurisdictional uncertainty has existed in the Local Government industrial relations landscape for many years and, while occasionally inconvenient, has not, in the main, caused significant problems that would require drastic and fundamental change such as that proposed by the Interim Report.

We do note that the risk to any organisation in mischaracterisation as a constitutional corporation in terms of legislative penalties under the State system is a lesser risk than mischaracterisation as a State system employer, under applicable Commonwealth legislation. This risk is one that has existed since the introduction of the Work Choices regime and been assessed by Local Governments in the context of access to legal advice, and accepted by Local Government employers under the current dual system for over a decade.

In the absence of a clear cost associated with jurisdictional uncertainty, it is difficult to understand how the gravity and cost to Local Government in implementing proposed

recommendation 69 will be weighed against the ‘cost’ of uncertainty by the Review in formulating its final recommendations. With no alternative proposal to remove uncertainty permitted within the scope of the terms of reference of the current Review, which is limited to determining the viability of a single proposed solution being sole State regulation, we repeat and rely on the 2017 Submission regarding the potential cost and impact on the Local Government sector associated with proposed recommendation 69.

Further in response to the Review’s comments in paragraph 1510 of the Interim Report, WALGA can clarify that a small number of Local Governments transferred to State system regulation following the end of the Work Choices transitional period. It is our understanding that the majority of those Local Governments were, at that time and following transition to the State system, applying the terms and conditions of the Federal awards in the absence of State based Local Government awards, which resulted in limited impact to award based terms and conditions of employment (as the Federal awards were mirrored to create State awards) and as such, the viability of Local Government services. The current circumstances differ considerably as the Review proposes that Local Governments transition between the Federal and State systems in light of the Local Government Industry Award 2010 (**LGIA**) which contains substantially different award conditions as detailed later in this Supplementary Submission. On this basis, WALGA refers the Review to its comments contained in the 2017 Submission regarding the impact of transfer on the sustainability of Local Government services.

Given the limited choice between maintaining the status quo and jurisdictional uncertainty, or a drastic and significant change for Local Government in moving to sole regulation by the State system, as proposed by the Interim Report, the Local Government sector supports the status quo. The remainder of this Supplementary Submission will address further transitional considerations for the Review in assessing the cost benefit of this recommendation.

While the Commonwealth contemplated circumstances where bodies established for Local Government purposes under the law of a State or Territory may be declared not to be national system employers³, WALGA queries the current drive by the State Government to achieve a declaration of this kind, given a similar jurisdictional uncertainty applies to the not for profit sector in WA. Particularly given the historical context of federal industrial relations regulation of Local Government in WA, in the absence of a clear indication by the Local Government sector in support of such a declaration, and further, in opposition to the strong position of Local Government sector employers on this matter. As such, we oppose the interim position of the

³ *Fair Work Act 2009* (Cth), s14(2).

Review that ‘the State should attempt to provide jurisdictional certainty, by way of a recommendation that local governments and their employees be regulated by the State system.’⁴

It is recommended that:

- A. The current dual system of industrial relations regulation of the Local Government sector remain unchanged.**
- B. State Government further consult with the Local Government sector regarding the cost and impact of the jurisdictional uncertainty under the current industrial relations regime to assess the need for change.**
- C. If recommendation B identifies a need for further certainty, that discussions be held between representatives of all three tiers of government and other key stakeholders in the Local Government industry regarding how industrial relations certainty is best achieved for the Local Government sector in WA.**

6. Fair Work Act Exemption

WALGA opposes the Review’s proposed recommendations 70 and 71 which facilitate recommendation 69 through the introduction of legislation to State Parliament declaring Local Governments not to be national system employers for the purposes of the *Fair Work Act 2009 (Cth) (FW Act)* and further endorsement by the Commonwealth Minister.

- 70. To facilitate recommendation 69, the State Government introduce legislation into the State Parliament consistent with s 14(2) of the FW Act that declares, by way of a separate declaration, that each of the bodies established for a local government purpose under the Local Government Act 1995 (WA) is not to be a national system employer for the purposes of the FW Act (the declaration).*
- 71. If the declaration is passed by the State Parliament, the State expeditiously attempt to obtain an endorsement under s 14(2)(c) and s 14(4) of the FW Act by the Commonwealth Minister for Small and Family Business, the Workplace and Deregulation, to make the declaration effective (the endorsement).*

⁴ Interim report at [1564].

WALGA confirms that while these proposed recommendations are opposed pursuant to the comments set out in clause 5 above, this method of facilitating proposed recommendation 69 would be preferred by WALGA over the removal of the corporate status of Local Governments for the reasons referenced by the Review in clause 9.9(b) of the Interim Report and associated complexities as demonstrated in New South Wales and Queensland.

It is recommended that:

- D. No legislation is introduced to parliament to declare that Local Government is not a national system employer.**

7. Terms of Reference 1-7 Proposed Recommendations

In order to comment more specifically on transitional considerations in light of the full recommendations included in the Interim Report regarding Terms of Reference 1-7, WALGA welcomes and acknowledges the modernisation of the State system as proposed in recommendations 1-68. However, further comprehensive assessment of the viability of the recommendations has not been considered in this Supplementary Submission due to the limited consultation timeframe.

The following recommendations are endorsed by WALGA and would be considered as fundamental pre-requisites before any transition of Local Government into the State system was effected.

7.1. Term of Reference 5

7.1.1. Recommendations 47 and 48 providing for the introduction of a State Employment Standards (SES).

WALGA endorses the introduction of a SES as part of the 2018 IR Act to provide for minimum conditions of employment for employees covered by the State system as detailed in recommendation 48. As Local Government long service leave entitlements are regulated by the *Local Government (Long Service Leave) Regulations (LSL Regs)*, we withhold any position on the SES as it purports to provide for long service leave in the State system other than that any interaction issues that may occur on between the LSL Regs and the proposed SES be contemplated.

7.1.2. Recommendations 53 and 54 increase to the casual loading and inclusion of

FDV leave.

WALGA supports that the amount set for casual loading should be a matter for consideration by the WAIRC or as part of the proposed SES. While WALGA acknowledges that casual employees operating under the Federal system receive a 25% casual loading and that there may be a need for review of the current rate within the State system, it would be appropriate to do so in the context of a wider review of employee entitlements and conditions. That is, WALGA does not support an arbitrary increase to the casual loading and inclusion in the *Minimum Conditions of Employment Act 1993 (WA) (MCE Act)*, in the absence of any review or analysis that supports this change. WALGA suggests that any review of the proposed casual rate be subject to further submissions from interested parties to fully explore the potential need and effects of an increase to the casual rate.

WALGA acknowledges the issue of family and domestic violence and welcomes the need for employers to be supportive and flexible when these matters arise. WALGA supports the inclusion of a minimum unpaid FDV leave entitlement in the SES. In WALGA's view each employer should be able to determine the quantum of leave and flexibility arrangements they choose to offer on a case by case basis.

7.2. Term of Reference 6

7.2.1. Recommendations 55 and 56 requiring the review and replacement of private sector awards.

WALGA supports and endorses the inclusion of Local Government in the industry list for the implementation of new awards, despite not falling within the scope of the original term of reference and regardless of the outcome of proposed recommendation 69. If recommendation 69 is not implemented, recommendation 55 is endorsed in full by WALGA.

However, given the complexities associated with the proposed transfer of Local Government to the State system and the unknown status of deemed industrial instruments should recommendation 69 be given effect, we oppose the restriction imposed by recommendation 55(a) as it applies to any award modernisation process involving Local Government awards in that instance. This limitation not to reduce current conditions of employment of employees is predicated on the modernisation of private sector awards of the WAIRC, and does not adequately

anticipate the circumstances applicable to modernisation of the Local Government awards in the context of deeming of the LGIA into the State system. In that instance, we submit that the State awards would require a more holistic approach to modernisation with reference to the additional entitlements included in the LGIA that did not otherwise exist in the State awards (such as on call allowances, LGIA clause 24.6). Taking a no-disadvantage approach to award modernisation in that circumstance will result in the minimum conditions across both Federal and State awards being retained without a balancing of the financial impact on Local Government employers. This will be addressed in more detail in relation to recommendation 72 below.

It is recommended that:

- E. The SES be introduced as part of the 2018 IR Act consistent with recommendations 47 and 48.**
- F. That any review of the casual loading be undertaken by the WAIRC or included as part of the SES, following consultation from interested parties.**
- G. That unpaid FDV leave be included in the SES.**

8. Deeming of Federal Industrial Instruments

WALGA opposes the Review's proposed recommendation 72 in line with the Local Government sector position regarding proposed recommendation 69.

If proposed recommendation 69 is effected by proposed recommendations 70 and 71, WALGA would support the deeming of Federal enterprise agreements to be State agreements as the counterpart to recommendation 70, however, opposes the blanket deeming of the Federal Local Government Industry Award 2010 to be a State award and further opposes the deeming of instruments taking effect upon endorsement as detailed below.

- 72. As a counterpart to recommendation 70, the State enact legislation that has the effect, upon the endorsement, of deeming local government Federal industrial awards, agreements or other industrial instruments to be State awards, agreements or other industrial instruments for the purposes of the 2018 IR Act.*

8.1. Effect following Endorsement

There is complexity in transitioning Federal instruments to the State system as a consequence of changing the applicable safety net and underpinning awards. This process is further complicated by the uncertainty introduced by the proposed State system update and award modernisation process potentially resulting from this Review. The timeframe for each step in the process taking effect should be considered carefully by the State government as the likely impact of changes taking immediate effect are destabilisation of the Local Government sector with increased uncertainty regarding applicable terms of conditions of employment (as discussed in the 2017 Submission).

Following any endorsement by the Commonwealth Minister as proposed by recommendation 71, we submit that the following steps would need to occur *prior to* Local Government moving to sole State system regulation:

8.1.1. **Introduction of the SES** – Both enterprise agreements and awards are drafted in contemplation of the applicable legislative safety net, whether it be Federal or State. Currently, there are significant differences between the safety net provided by the National Employment Standards (**NES**) and the MCE Act and the Termination, Change and Redundancy General Order (**TCRG Order**) as detailed in Attachment 6B to the Interim Report. In the context of the proposed introduction of the SES to underpin State awards and enterprise agreements, it would be costly, inefficient, disruptive and unreasonable for the large majority of Local Governments to transition from the Federal safety net to the existing State safety net, only to undertake a further transition to the SES once implemented.

8.1.2. **Award modernisation** – As the SES will replace the MCE Act and the TCRG Order, it follows that introduction of the SES occur prior to modernisation of the State awards as proposed in the Interim Report. Any modernisation of awards prior to the introduction of the SES would require subsequent revision and alignment to the expanded minimum safety net. Further, as State awards provide the underpinning comparison conditions for enterprise agreement bargaining, it follows that clarification of applicable award conditions and award modernisation be undertaken prior to Local Governments transitioning. As with the introduction of the SES, in the context of an impending award modernisation process, transition of Local Government to existing State awards which are largely out of date from the modern Federal system only to undertake a further transition to the new

modernised State award/s would be costly, inefficient and disruptive to the Local Government sector. Further comments regarding the award modernisation process are set out below.

8.1.3. **Enterprise bargaining** – Although revision of the enterprise bargaining requirements in the *Industrial Relations Act 1979 (WA)* (**IR Act 1979**) is not within the scope of the current Review, it warrants consideration as relevant to transition of Local Government to sole State regulation. Please refer to the 2017 Submission regarding the volume of enterprise agreements currently registered with the FWC. The approach to bargaining for collective agreements in the State system differs significantly to that of the Federal system. Consistent with the view submitted by the WASU, we also acknowledge that the Local Government sector has encountered challenges with the onerous form and process requirements in the Federal system in gaining approval and registration of enterprise agreements. We would not support the introduction of similar unworkable requirements from the Federal system to the State system, however, the essential parties to the negotiation in the Federal system align to modern workplace practices with employee bargaining representatives have a key role, in addition to union representation. Given the declining union membership as referenced in the Interim Report, and the entrenchment of the Federal bargaining process in Local Government workplace practices in Western Australia for more than a decade, it is vital that the State system requirement for employers to bargain only with unions is revised to include employee bargaining representatives. Further comments regarding enterprise bargaining are set out below.

8.1.4. **Transition of Local Government and deeming of industrial instruments** – Having introduced the SES, modernised the State awards and considered the bargaining requirements under the State system, it would then follow that the transition of Local Government to the State system and associated deeming of industrial instruments would be streamlined, reducing the cost and operational impact on Local Governments.

8.2. Deeming Enterprise Agreements

WALGA supports federally registered enterprise agreements (**Agreements**) being deemed State agreements for the purposes of the 2018 IR Act. We submit that this would minimise the initial impact on Local Government operations by allowing a transition period

for alignment of existing Agreement entitlements to State system safety net conditions and underpinning awards. Further, as Agreements contain above award entitlements for employees and have been negotiated between Local Governments and their employees to meet the needs of individual Local Government operations, we support the continued operation of these instruments to allow Local Governments to deliver on their strategic objectives through the transition period. WALGA do not support the reversion of employee's currently covered by Agreements to State award conditions.

Whilst this recommendation is supported, it is suggested that the matter of the current incorporation of the NES into each Agreement be contemplated. Based on WALGA's recommendation that the SES and Award modernisation process be undertaken prior to the deeming of Agreements, we further suggest that the Review consider excluding the NES from deemed Agreements and replacing this with the SES.

It is recommended that:

- H. Local Governments, and any applicable federally registered Agreements, transfer to the State IR system following introduction of the SES and that the Agreements are amended to incorporate the SES in place of the NES.**

8.3. Deeming of Federal Awards

WALGA does not support the proposed recommendation that Federal awards be deemed State awards for the purposes of the 2018 IR Act. While WALGA does support that any future State award/s for Local Government be holistically reviewed and modernised in light of the conditions in the LGIA (see further comments under clause 10 - Award Modernisation below), we are not of a view that deeming the LGIA apply prior to modernisation would be appropriate for the reasons below.

- 8.3.1. The scope of the LGIA is industry based excluding the operation of other awards. While the existing State awards are also industry based, they do not operate to the exclusion of other awards and it is unclear how the LGIA would interact with the existing State awards. This has the potential to introduce unnecessary ambiguity for both transitioning Local Governments and those currently operating in the State system. Those Local Government's currently operating in the State system would potentially be required to transition to the LGIA only to transition again to the modernised State Award/s, which is a resource intensive and costly exercise.

- 8.3.2. Local Governments would be required to transition to the State system, while retaining Federal award entitlements only to transition the State award/s at a later date. We consider this two tiered process to be unnecessary and destabilising for the Local Government sector.
- 8.3.3. The LGIA like federal Agreements, incorporates the NES, which would require replacement by the SES prior to applying to Local Governments.
- 8.3.4. Many terms of the LGIA are specific to the provisions of the FW Act. This would require significant alteration prior to being deemed a State award.

Examples: Clause 9 Dispute resolution provides for matters to be referred to the FWC and clause 8 consultation (FW Act section 139 (j)). Clause 7 award flexibility (FW Act section 145).

WALGA recommends that the State Government consider undertaking the award modernisation process prior to Local Government's transition to the State system which would remove the requirement to deem the Federal award a State instrument.

It is recommended that:

- I. **Award modernisation be undertaken prior to Local Government's transition to the State IR System.**

9. Award Comparison

We note the Review's reference to the WASU submission regarding employment conditions in the LGIA as compared to the State awards⁵ and the weight placed on these assertions.⁶

To provide preliminary assistance to the Review in comparing some key entitlements under the three predominant awards applicable to Local Government, we have included wages, allowances and span of hours comparisons for consideration as Appendix 1 – Local Government Awards – Conditions Comparison.

As demonstrated in part in Appendix 1, there are substantial differences in entitlements between the Federal and State awards. Some further examples are set out below:

⁵ Interim Report at [1521]

⁶ Interim Report at [1561]

- The *Municipal Employees (Western Australia) Interim Award 2011 (State MEA)*, which applies generally to Local Government outside workers, contains provisions for an allowance of \$7.41 per day for the removal of bedding infected with typhoid or tuberculosis (clause 19.9.3). This function is obviously outdated and outside workers would not be exposed to such duties in modern Australian workplaces.
- The *Local Government Officers (Western Australia) Interim Award 2011 (State LGO)* and State MEA do not provide for any on call provisions. We consider this does not reflect the requirements of Local Government, as Rangers, Security Officers and Emergency Service employees at many Local Governments require these positions to be on call.
- Under the terms of the State MEA cleaners can only be rostered Monday to Friday, unless agreement is reached. We do not consider this to align with community expectations for cleaning of public toilets and recreation facilities.
- Some employees under the State LGO receive an allowance for having dependent children. There is no equivalent entitlement for employees under the State MEA. We also consider this to be an entitlement which is not attached to the performance of work, irrelevant to the modern workplace and introduces the potential for discrimination on the basis of family responsibility.

Please note that the wage comparisons are intended as a guide and are based on WALGA's assessment of the translation of award classifications across the three awards. We recommend that the Review undertake a further assessment of award conditions to establish an evidence based view on Local Government award conditions.

10. Award Modernisation

With reference to the substantial differences between the Federal and State awards, as demonstrated in part in Appendix 1, we suggest the Review carefully consider how the transition between awards will occur, the process of modernisation of the relevant award/s and the timeframes and order of implementing the transition. To assist the Review in these considerations we provide the following information regarding the current State and Federal Local Government awards.

10.1. Background

Together with the Australian Local Government Associations and unions, WALGA was

involved in the development of the LGIA, as part of the Australian Industrial Relations Commission's award modernisation process completed in 2009. This involved heavy consultation and research across Australia to understand the nature and type of work undertaken by various work groups within the Local Government industry. The result of which was a contemporary Award written in plain English, which contemplated the modern Local Government workplace and the nature and types of work undertaken in the sector.

In 2011, WALGA made submissions to the WAIRC to mirror the LGIA in the State system, for the few Local Governments who operated within that jurisdiction, to provide consistency. This proposal was not supported and ultimately the pre-reform Federal Awards the *Local Government Officer's (Western Australia) Award 1999* and *Municipal Employee (Western Australia) Award 1999* were mirrored in the State system as interim Awards (State LGO and State MEA) without review or modernisation.

10.2. Award Conditions

The State LGO and MEA have continued to operate in the State system without amendment since 2011, with the exception of annual wage increases. During this time the LGIA has been reviewed by the FWC as part of the two year modern award review and currently as part of the four year modern award review. Prior to the creation of the LGIA and throughout subsequent award reviews, WALGA has comprehensively and continually consulted with members to ensure the award was contemporary and reflected industry views. In comparison to the contemporary LGIA, the State LGO and MEA have become increasingly more outdated and as a result, out of step with modern workplaces.

WALGA is of the view that should the State LGO and/or MEA be used as a basis for award modernisation, this would fail to take advantage of the significant work undertaken by the FWC to create a contemporary and industry supported award in the LGIA.

Further, as some conditions were transitioned out of the LGIA by incorporation in wage rates, reintroducing all allowances and conditions across three awards raises concern by WALGA that this may result in a protracted modernisation process with the potential for cherry picking conditions and double dipping of extinct entitlements at an increased cost to Local Government.

Example: The State LGO and MEA currently contain provisions for district allowances. Under the terms of the LGIA these were transitioned out and ceased to operate on 31 December 2014. As the LGIA was subject to no reduction in take-home pay, this often

resulted in increased wages. If the allowance was reintroduced and wages remained as is this would result in employees receiving a double benefit for the same entitlement.

To streamline the State award modernisation process and build on the significant body of work undertaken from the Federal modernisation process, we recommend that the proposed modernisation of the State awards be aligned to the LGIA.

It is recommended that:

- J. The proposed modernisation of the State Local Government awards be aligned to the modern Local Government Industry Award 2010.**

11. Bargaining

WALGA submits that the review of the State system should address the bargaining process and requirements.

WALGA understands that there are three different types of bargaining agreements provided for under the IR Act 1979.

- Industrial agreements (IAs), including single employer and multi-employer agreements of which the union must be a party;
- Employer-employee agreements (EEAs), similar to Australian Workplace Agreements under the *Workplace Relations Act 1996* (Cth); and
- Enterprise orders.

It is our understanding that the only type of bargaining agreement which is currently being utilised is IAs. We are of the view that while it is appropriate to maintain IAs, changes are required to modernise the process.

We suggest the three types of bargaining agreements are abolished and replaced with an enterprise bargaining agreement only. That enterprise bargaining be between the employer and employee with the option of the union to be a party to the agreement or involved in negotiations as a bargaining representative for Local Government members. We also suggest that the Review consider including provisions for greenfields and multi-enterprise agreements.

While WALGA understands the value of union involvement in bargaining and has had experience with productive negotiation outcomes as a result of union presence, we would not

attribute the challenges in bargaining as described by the WASU to the Federal negotiation requirements and do not support the compulsory requirement for unions to be a party to an Agreement. With union membership declining, we are not of a view that it is appropriate nor a reasonable expectation that unions can effectively represent the views of 'potential' members in the current industrial landscape. Enforcing the involvement of unions in enterprise agreements in situations where they have little or no knowledge of the workplace can thwart negotiations, making them extremely protracted and introduce claims for conditions not highly valued by employees at the expense of other previously negotiated conditions.

WALGA submits that a Better Off Overall Test (BOOT) be applied for the approval of the Agreement, similar to the requirements of the FW Act. WALGA submits that this should replace the current No Disadvantage Test (NDT) which only applies to EEAs. Further that the BOOT would achieve a global or holistic view of whether the Agreement is better than the Award, rather than a line by line comparison as provided for in the NDT.

It is recommended that:

- K. The three types of bargaining agreements be reviewed and replaced with a single collective enterprise bargaining agreement in which the parties are the employer and employees, with the option of the union being a party.**
- L. That the better off overall test replace the no disadvantage test.**

12. Transitional Considerations and Taskforce Composition

In addition to the considerations for transition outlined in the 2017 Submission, if proposed recommendations 69-71 were given effect by the State Government, we provide the following further comments for consideration.

If proposed recommendation 69 is effected by proposed recommendations 70 and 71, WALGA would support the establishment of a taskforce as proposed by recommendation 73 with a variation to the taskforce composition as set out below

- 73. If the endorsement is obtained, a taskforce be assembled and chaired by a representative of DMIRS and include a representative of the Department of Local Government, Sport and Cultural Industries, the WAIRC, the Western Australian Local Government Association, the Western Australian Municipal, Administrative, Clerical and Services Union of Employees, the Western Australian Municipal,*

Road Boards, Parks and Racecourse Employees' Union of Workers, Perth, the State Solicitor's Office and a nominee of the President of the Law Society of Western Australia, to oversee, monitor, assist, facilitate and progress the transition of local government employers and employees between the Federal and State industrial relations systems

WALGA supports proposed recommendation 73 in relation to the creation of a taskforce to transition Local Government's between the Federal and State systems. WALGA is of the view that the taskforce, as proposed, inadequately represents the diversity, needs and interest of its Local Government members with WALGA as the sole employer representative.

WALGA proposes that two additional positions be provided for on the taskforce to be filled by Local Government representatives, nominated by WALGA in line with WALGA's Selection Committee process outlined below, who are able to speak directly to the implications of transitioning to the State system.

WALGA utilises a thorough, merit-based nomination and selection process when seeking Local Government representatives for external boards, committees and advisory bodies. The nomination and selection process is overseen by the WALGA Selection Committee which comprises the following members:

- WALGA Deputy President – Chair;
- State Councillor from the Metropolitan Constituency;
- State Councillor from the Country Constituency;
- Local Government Professionals WA Representative;
- Independent Member with significant experience in recruitment and selection.

WALGA also proposes that consideration be given to appointing a member of the Chamber of Commerce and Industry WA (**CCI WA**) to the taskforce. We understand that the CCI WA counts in its membership a number of Local Governments and therefore should be afforded the opportunity to represent their interests.

It is recommended that:

M. The proposed taskforce composition be revised to include two Local Government

Officers, to be appointed by WALGA in line with WALGA's Selection Committee process, and the CCI WA.

13. Mobility between State and Local Government Employment

WALGA notes the Review's position in relation to mobility between State and Local Government for employees and portability of entitlements.⁷ WALGA acknowledges its policy position adopted in 2006, that 'employment entitlements should be transferable between State and Local Government employers'. This position was established in the context of the then skills shortages being experienced in the industry. However, it is the view of WALGA the subject of mobility of employees and portability of entitlements between State and Local Government is beyond the scope of the terms of reference of the Review as it does not adequately relate to the question posed in term of reference 8.

As WALGA's policy position has not been revised since 2006, further consultation is required with our members prior to putting forward a representative position on the matter. WALGA intends to address the issue in further detail as part of the Local Government Act review process.

It is recommended that:

N. Any review of portability of entitlements between State and Local Government be considered as part of the current Local Government Act review process.

14. Conclusion

As outlined in the 2017 Submission and this Supplementary Submission, WALGA are of the view that Local Government employers and employees in Western Australia should not exclusively be regulated by the State system. WALGA submits the recommendations within this submission for the consideration of the Review.

⁷ Interim Report at [1530] – [1532].

Appendix 1 – Local Government Awards - Conditions Comparison

Table 1.1 – Award Allowances Comparison

Allowance	Local Government Industry Award 2010		Local Government Officers' (WA) Interim Award 2011		Municipal Employees (WA) Interim Award 2011	
Description	Entitlement	Clause	Entitlement	Clause	Entitlement	Clause
Meal Allowance	\$15.14 per day	15.1	\$11.13 , \$7.22 after the completion of each four continuous hours, \$10.10 where overtime in excess of four hours duration is required to be worked on a Saturday, Sunday or holiday and \$6.59 on each subsequent occasion in the same work period	17.5	\$9.30 for a meal and \$8.80 for a second or subsequent meal	19.8.1
Vehicle Allowance	Motor vehicle \$0.78 per km Motorcycle \$0.26 per km	15.2	Metropolitan Over 2600cc 93.97 c/km Over 1600-2600cc 67.72 c/km Over 1600cc and under 55.85 c/km South West Land Division Over 2600cc 95.54 c/km Over 1600-2600cc 68.66 c/km Over 1600cc and under 56.69 c/km North of 23.5 Latitude Over 2600cc 103.52 c/km Over 1600-2600cc 74.12 c/km Over 1600cc and under 61.21 c/km Rest of State Over 2600cc 99.01 c/km	30.6	Please refer to Award for full listing of entitlements	19.10

Allowance	Local Government Industry Award 2010		Local Government Officers' (WA) Interim Award 2011		Municipal Employees (WA) Interim Award 2011		
	Description	Entitlement	Clause	Entitlement	Clause	Entitlement	Clause
			Over 1600-2600cc 70.87c/km Over 1600cc and under 58.37 c/km Motor Cycle 32.55 c/km				
Tool Allowance	\$19.00 per week	15.3	n/a	n/a	n/a	n/a	
Camping Allowance	\$24.485921 per night	15.4A	n/a	n/a	A daily or weekly amount agreed between the employer and employee	19.1.1	
Leading Hand Allowance	\$23.421316, \$31.938158, \$40.455000	15.6	n/a	n/a	n/a	n/a	
First Aid Allowance	\$14.904474 per week	15.7	\$475.24 per annum (\$9.14 per week)	17.1	n/a	n/a	
Adverse Working Conditions (AWC) Allowance	L1: \$0.745224 per hour L2: \$1.064605 per hour L3: \$10.646053 per hour	15.8	n/a	n/a	Itemised in specific allowances	Various	
On Call Allowances	M-F: \$21.292105 per day SAT: \$31.938158 per day SUN/PH: \$42.584211 per day	24.6	n/a	n/a	n/a	n/a	
Sleepover Allowance	\$10.646053 per hour	24.7	n/a	n/a			
District/Location Allowance	n/a	n/a	Please refer to Award for full listing of entitlements	17.2	Please refer to Award for full listing of entitlements	19.6	
Dependent Child Allowance	n/a	n/a	\$167.01 per child, \$674.08	17.4	n/a	n/a	

Allowance	Local Government Industry Award 2010		Local Government Officers' (WA) Interim Award 2011		Municipal Employees (WA) Interim Award 2011		
	Description	Entitlement	Clause	Entitlement	Clause	Entitlement	Clause
			maximum per year.				
Working in the Field Allowance	n/a	n/a	\$12.43 per day	17.8	n/a	n/a	
Returning Home Allowance	n/a	n/a	n/a	n/a	\$19.35 for any weekend	19.2.4	
Traveling to Work Allowance (1km)	n/a	n/a	n/a	n/a	\$8.56 per day	19.2.5	
Industry Allowance	Included in AWC allowance	15.8	n/a	n/a	\$21.82 per week	19.5.1	
Wet Weather Allowance	Included in AWC allowance	15.8	n/a	n/a	\$3.54 per day	19.9.1	
Removing of Dead Animals	Included in AWC allowance	15.8	n/a	n/a	Horses, cattle, pigs and animals of similar size \$5.58 Sheep and animals of similar size \$3.67 Dogs, cats and animals of similar size \$1.57	19.9.2	
Removing and Destroying of Bedding	Included in AWC allowance	15.8	n/a	n/a	\$7.41 per day	19.9.3	
Fire Fighting Allowance	Included in AWC allowance	15.8	n/a	n/a	\$0.55 per hour	19.9.5	
Excavation and Heights Allowance	Included in AWC allowance	15.8	n/a	n/a	\$2.62 per day to \$3.71 per day	19.9.6	
Protective Clothing and Equipment Allowance	Included in AWC allowance	15.8	n/a	n/a	\$1.56 per day	19.11.1	

Table 1.2 – Award Span of Hours Comparison

Employee Group	Local Government Industry Award 2010		Local Government Officers' (WA) Interim Award 2011		Municipal Employees (WA) Interim Award 2011	
	Span of hours	Weekend Penalty	Span of hours	Weekend Penalty	Span of hours	Weekend Penalty
Aerodromes/airports	Mon-Sun	Yes	Mon-Sun	Yes	n/a	n/a
Caretakers/hall keepers/caravan park employees	Mon-Sun	Yes	Mon-Sun	Yes	Mon-Fri	No, overtime unless agreed
Catering/hospitality	Mon-Sun	Yes	Mon-Fri	No, Overtime	n/a	n/a
Cleaners	Mon-Sun	Yes	n/a	n/a	Mon-Fri	No, overtime unless agreed
Community services	Mon-Sun	No	Mon-Sun	No	n/a	n/a
Customer service centres	Mon-Sun	Yes	Mon-Fri	No, Overtime	n/a	n/a
Garbage, sanitary and sullage services	Mon-Sun	Yes	n/a	n/a	Mon-Fri	No, overtime
Local law enforcement and community safety services	Mon-Sun	Yes	Mon-Sun	Yes	n/a	n/a
Libraries	Mon-Sun	Yes	Mon-Sat	Yes 10%	n/a	n/a
Livestock and saleyards	Mon-Sun	Yes	n/a	n/a	Mon-Fri	No, overtime
Parking station attendants	Mon-Sun	Yes	Mon-Sun	Yes	n/a	n/a
Recreation centres/golf courses	Mon-Sun	No	Mon-Sun	No	n/a	n/a
Tourism service	Mon-Sun	Yes	Mon-Fri	Overtime	n/a	n/a
All others	Mon-Fri	No, Overtime	Mon-Fri	No, Overtime	Mon-Fri	No, overtime

Table 1.3 – Award Wage Rates Comparison

Local Government Industry Award 2010		Local Government Officers' (WA) Interim Award 2011		Municipal Employees (WA) Interim Award 2011	
Classification Level	Minimum Weekly Wage	Classification Level	Minimum Weekly Wage	Classification Level	Minimum Weekly Wage
Level 1	\$38,630.80			Level 1 (up to 38 hours)	\$35,916.40
				Above 38 hours	\$36,826.40
Level 2 – 55%	\$21,959.08	Level 1 – 16 years and under	\$28,413.00		
Level 2 – 65%	\$25,951.64	Level 1 - 17 years	\$30,065.00		
Level 2 – 75%	\$29,944.20	Level 1 - 18 years	\$32,458.00		
Level 2 – 85%	\$33,936.76	Level 1 - 19 years	\$34,859.00		
Level 2 – 95%	\$37,929.32	Level 1 - 20 years	\$37,241.00		
Level 2	\$39,925.60	Level 1 - Adult	\$38,975.00	Level 2	\$38,090.00
				Level 3	\$39,228.80
Level 3	\$41,459.60	Level 2	\$40,275.00	Level 4	\$40,029.60
			\$41,061.00		
			\$42,325.00		
			\$43,511.00		
Level 4	\$42,073.20	Level 3	\$44,570.00	Level 4A	\$41,054.00
			\$45,252.00	Level 5	\$41,631.20
			\$45,936.00		
			\$46,618.00		
Level 5	\$44,709.60			Level 6	\$43,498.00
Level 6	\$48,380.80	Level 4	\$47,712.00		
			\$48,171.00		
			\$48,823.00		

Local Government Industry Award 2010		Local Government Officers' (WA) Interim Award 2011		Municipal Employees (WA) Interim Award 2011	
Classification Level	Minimum Weekly Wage	Classification Level	Minimum Weekly Wage	Classification Level	Minimum Weekly Wage
			\$49,812.00		
Level 7	\$49,218.00	Level 5	\$51,021.00		
			\$51,719.00		
			\$52,280.00		
			\$53,213.00		
Level 8	\$53,185.60	Level 6	\$53,892.00		
			\$55,028.00		
			\$55,883.00		
			\$56,875.00		
Level 9	\$56,893.20	Level 7	\$57,855.00		
			\$58,953.00		
			\$59,860.00		
			\$60,508.00		
Level 10	\$62,186.80	Level 8	\$61,671.00		
			\$62,577.00		
			\$63,481.00		
			\$64,389.00		
Level 11	\$70,122.00	Level 9	\$66,188.00		
			\$67,230.00		
			\$68,358.00		
			\$69,529.00		